EUROPÄISCHES PARLAMENT

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Steven Maijoor
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Subject: Delay of ESMA inquiry into dividend arbitrage schemes

Dear Chair,

Last year on November 29, the European Parliament adopted a resolution on the cum-ex scandal. This fraudulent or at least doubtful practice with a crucial cross-border dimension has cost European taxpayers billions of Euros. More worryingly, there is evidence that comparable dividend arbitrage practices with significant theft of tax money are still ongoing.

In its resolution, the European Parliament calls upon EBA and ESMA to conduct an inquiry on the basis of Article 22(4) of the respective ESAs regulation. Dividend arbitrage trading schemes such as cum-ex/cum-cum constitute a threat to the integrity of financial markets caused by a "financial activity or type of product or type of conduct". In the view of the European Parliament such inquiry should therefore establish the nature and magnitude of actors in these schemes, assess whether there were breaches of either national or Union law, assess the actions taken by financial supervisors in Member States and make appropriate recommendations for reform and for action to the competent authorities concerned.

Threats to the integrity of a market go beyond questions of legality. Market integrity encompasses the fair and safe operation of markets, without misleading information or inside trades, so that investors can have confidence and be sufficiently protected. Integrity means more generally the adherence to strong moral and ethical principles and values. It is obvious according to the widely published evidence that the cum-ex/cum-cum practices violate this fundamental principle in a social market economy as foreseen in the European Union Treaties.

ESMA has to date only initiated a discussion among its members on the matter without adopting any decision. In our view, this is insufficient given both, the urgency of the matter as well as the request made by the European Parliament more than four months

ago. It should also be noted that it is the first time that the European Parliament has used this power since the establishment of the European System for Financial Supervision (ESFS). Beyond this it was brought to our attention that there seems to be considerable reluctance among national competent authorities to initiate this such an inquiry any time soon. This is also one of the reasons why the European Parliament insisted to strengthen the decision-making procedure for conducting an inquiry pursuant to Article 22(4) in the current review of the ESFS.

Since an ongoing fraud practice requires swift and determined action, we would like to urge you to make all possible efforts to initiate this important inquiry as soon as possible. It would be detrimental to the credibility of European democracy if the voice of the European Parliament on this important matter is simple overheard. In the case no further action is taken, the European Parliament will of course reserve its right to initiate another resolution on the matter.

Counting on the spirit of good cooperation, we remain at your disposal for further questions and look forward to hearing from you.

Yours sincerely,

Sven Giegold, Pervenche Berès, Othmar Karas and Wolf Klinz